



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT - 9 2014

Marc E. Elias, Esq.
Andrew H. Werbrock, Esq.
Perkins Coie
700 13th Street, NW, Suite 600
Washington, DC 20005

RE: MUR 6782
Mark Pryor for U.S. Senate
and Bob Edwards in his official capacity
as treasurer

Dear Messrs. Elias and Werbrock:

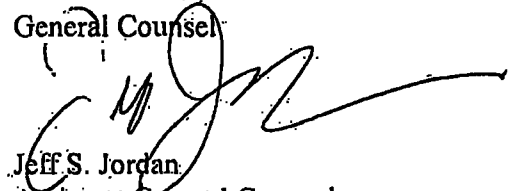
On February 21, 2014, the Federal Election Commission notified your clients, Mark Pryor for U.S. Senate and Bob Edwards in his official capacity as treasurer (the "Committee"), of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 6, 2014, based upon the information contained in the Complaint, and information provided by the Committee, the Commission decided to dismiss the Complaint and closed its file in this matter. Accordingly, the Commission closed its file in this matter on October 6, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

BY: 
Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Mark Pryor for U.S. Senate and
6 Bob Edwards in his official capacity as treasurer

MUR 6782

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9 **I. INTRODUCTION**

10 This matter was generated by a Complaint filed by Justin Meeks alleging violations of the
11 Federal Election Campaign Act of 1971, as amended (the "Act"), by Mark Pryor for U.S. Senate
12 and Bob Edwards in his official capacity as treasurer (the "Committee"). After reviewing the
13 record, the Commission exercises its prosecutorial discretion and dismisses this matter as to the
14 Committee. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

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18 Meeks asserts that the Committee violated the disclaimer provisions for televised
19 communications under 52 U.S.C. § 30120(d)(1)(B)(i) (formerly 2 U.S.C. § 441d(d)(1)(B)(i)) and
20 11 C.F.R. § 110.11(c)(3)(ii) by including an image of Pryor that was of insufficient size to
21 clearly identify him as the candidate approving the communications.¹ Compl. at 1. On February
22 6, 2014, the Committee broadcast two 30-second television advertisements entitled "Linda" and
23 "Courtney," which aired statewide in Arkansas. *Id.*; Attach. A, Seth McLaughlin, *Sen. Pryor*
24 *knocks Rep. Cotton on Medicare in TV ads*, WASHINGTON TIMES, Feb. 5, 2014. Each
25 advertisement depicts a woman airing her concerns about Pryor's opponent's record on
26 Medicare. *Id.* According to the Complaint, the communications' "stand by your ad" disclaimers

¹ On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 did not comply with the law because while they included an audio statement of Pryor approving
2 the message, the accompanying photographic image of Pryor was “postage-stamp sized” and
3 should have been either full-screen size or occupied at least 80% of the vertical screen height.
4 *Id.* at 2.

5 The Response filed by Pryor’s principal campaign committee is supported by an affidavit
6 from Paul Johnson, the Committee’s media buying consultant, stating that the televised
7 campaign advertisements originally aired on February 6, 2014, and were produced by an
8 experienced media vendor.² Resp. at 2, Paul Johnson Aff. at 1-2 (Apr. 4, 2014). The Response
9 further asserts that as originally aired, the advertisements complied with the Act and Commission
10 regulations, in that each contained a spoken statement by Pryor: “I’m Mark Pryor and I approve
11 this message;” a written disclaimer stating: “Approved by Mark Pryor. Paid for by Mark Pryor
12 for U.S. Senate” that appeared on screen for the last four seconds of the advertisements; and an
13 image of Pryor appearing during the last four seconds of the advertisements in the lower left-
14 hand corner of the screen next to the written disclaimer. *Id.* at 2; Johnson Aff. at 3. According
15 to the Response, once questions were raised about the size of Pryor’s image on the disclaimer
16 portion of the advertisements, the Committee on its own initiative, and before the filing of the
17 Complaint, instructed its media vendor to add a full-screen image of Pryor during the last four
18 seconds of the advertisements. *Id.* at 2; Johnson Aff. at 4-5. The advertisements with the full-
19 screen image of Pryor aired starting February 14, 2014. *Id.*

20 The Response points to the language in the Commission’s regulation at 11 C.F.R.
21 § 110.11(c)(3)(ii)(B) pertaining to televised advertisements authorized by candidates, and argues

² The Response provided the following website links to view the advertisements as they originally aired:
<https://www.youtube.com/watch?v=43OwZnK1ddQ> (“Courtney”);
<https://www.youtube.com/watch?v=MiskpgUMfT0> (“Linda”) (last visited Sep. 3, 2014). See Resp. at n. 2.

1 that it does not require that the photographic image of the candidate be of a particular size, but
2 only that it be "clearly identifiable." Resp. at 2-3. Last, the Response requests that the
3 Complaint be dismissed because the written and spoken disclaimers on the two advertisements,
4 together with the photograph of Pryor, made it clear that the candidate approved the messages,
5 and the public was not deprived of any meaningful disclosure. *Id.*

6 **B. Legal Analysis**

7 The Act requires that whenever a public communication is authorized and financed by a
8 candidate or his or her committee, the communication must include a disclaimer notice that
9 clearly states the communication has been paid for by the authorized political committee.
10 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. § 110.11(b)(1).

11 The Act's "stand by your ad" provisions specify that a television communication paid for
12 or authorized by a candidate's principal campaign committee must include an oral statement by
13 the candidate that identifies the candidate and states that the candidate approved the
14 communication, conveyed by either an unobscured, full-screen view of the candidate making the
15 statement, or the candidate in voice-over, accompanied by a clearly identifiable photographic or
16 similar image of the candidate. 52 U.S.C. § 30120(d)(1)(B) (formerly 2 U.S.C.
17 § 441d(d)(1)(B)); 11 C.F.R. § 110.11(c)(3)(ii). The regulation further sets forth that a still image
18 of the candidate shall be considered "clearly identifiable" if it is at least eighty (80) percent of
19 the vertical screen height. 11 C.F.R. § 110.11(c)(3)(ii)(B). A written statement that the
20 candidate approved the message must also appear at the end of the communication in a clearly
21 readable manner with a reasonable degree of color contrast between the background and the
22 printed statement, for a period of at least four seconds. 52 U.S.C. § 30120(d)(1)(B)(ii) (formerly
23 2 U.S.C. § 441d(d)(1)(B)(ii)); 11 C.F.R. § 110.11(c)(3)(iii).

1 The Commission's Explanation and Justification describes the regulation at 11 C.F.R.
2 § 110.11(c)(3)(ii)(B), as a safe harbor provision because "[t]hat size is, in the Commission's
3 judgment, a meaningful alternative to the full-screen requirement, and complies with Congress's
4 mandate that the picture be "clearly identifiable." Disclaimers, Fraudulent Solicitation, Civil
5 Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76,962, 76,966 (Dec.
6 13, 2002) ("E&J").

7 The advertisements' disclaimers as originally aired on February 6, 2014, include an audio
8 statement of Pryor approving the message, a similar written statement which appears to be at
9 least four percent of the vertical picture height, and a photographic image of Pryor which appears
10 to be twice the height of the written disclaimer. *See* n. 2, *supra*. The affidavit attached to the
11 Response sets forth that the new disclaimers included a full-screen view of Pryor. *Resp.* at 2;
12 *Johnson Aff.* at 5.

13 It appears that the original televised advertisements contained sufficient information to
14 clearly identify who paid for the communications, as well as an apparently adequate spoken
15 message of approval by the candidate. Moreover, the Committee took immediate action to
16 remedy any alleged disclaimer violation by increasing the candidate's photographic image to a
17 full screen view on new advertisements.³

18 Therefore, the Commission exercises its prosecutorial discretion and dismisses this
19 matter as to Mark Pryor for U.S. Senate and Bob Edwards in his official capacity as treasurer.
20 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

³ The Commission has traditionally dismissed cases such as this one, where the candidate and his or her committee substantially complied with the Commission's disclaimer regulations, the communications apparently contained sufficient identifying information to prevent the public from being misled as to who paid for them, and the alleged disclaimer violations, if any, were technical in nature and unintentional. *See, e.g.*, Cert. Jul. 9, 2009, MUR 6116 (Tim Cunha for Congress, *et al.*); Cert. Oct. 15, 2008, MUR 6016 (Ose for Congress, *et al.*).